

NIXON PEABODY_{LLP}
ATTORNEYS AT LAW

50 Jericho Quadrangle, Suite 300
Jericho, New York 11753-2728
(516) 832-7500
Fax: (516) 832-7555
Direct Dial: (516) 832-7538
E-Mail: jchiclicos@nixonpeabody.com

May 6, 2013

VIA ECF

The Honorable A. Kathleen Tomlinson
United States Magistrate Judge
United States District Court for the
Eastern District of New York
944 Federal Plaza
Central Islip, New York 11722

RE: Lawrence I. Friedmann v. Raymour Furniture Co., Inc., et al.
12 Civ. 1307 (LDW)(AKT)

Dear Magistrate Judge Tomlinson:

As you know, this firm represents defendant Raymour Furniture Company, Inc., d/b/a Raymour & Flanigan Furniture ("Defendant") in connection with the above-referenced matter. We write in response to the May 6, 2013 letter of Walker Harmon, Esq., counsel for Plaintiff, regarding the parties' Joint Pre-Trial Order (referred to herein as the "Order"). As detailed herein, we are at a loss to understand Mr. Harmon's objections to the filing of the Order.

By way of background, on April 29, 2013, another attorney at Plaintiff's counsel's firm, Peter Andrews, Esq., filed a version of the Order. Because Defendant did not have the opportunity to respond to Plaintiff's revisions, on April 30, 2013, Your Honor instructed the parties to meet and confer regarding the Order, and to file the document by May 16, 2013.

In accordance with Your Honor's directive, we arranged to speak with Mr. Andrews this morning to confer on the Order. During this call at approximately 10:35 a.m. this morning, we informed Mr. Andrews that the only further changes that we were going to make to the Order that Plaintiff filed on April 29, 2013 were certain objections to Plaintiff's designation of deposition testimony, as he added such designations to the Order at the last minute. Mr. Andrews did not indicate that he wished to make any changes to the document. We informed and confirmed with Mr. Andrews, at least twice during this call, that we would make such changes, send him the document, and then file the Order this afternoon. Mr. Harmon was not a party to this conversation.

At 12:03 p.m. today, we sent Mr. Andrews the revised Order via e-mail, and indicated that we would be filing the document this afternoon. Over the next five hours, Mr. Andrews did not raise any objections to the filing of the Order consistent with our earlier discussion. Accordingly, at approximately 5:00 p.m. this evening, we filed the Order.

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At 5:39 p.m., we received a voicemail message from Mr. Harmon. In this message, Mr. Harmon accused us of filing the Order without authorization from his office, and demanded that we withdraw the Order, despite Mr. Andrews' authorization. Mr. Harmon, who did not take part in any communications on this topic, sent a letter to Your Honor, again stating that we had filed the Order without permission.

In light of the foregoing, we cannot comprehend Mr. Harmon's objection to the authorized filing of the Order. As indicated above, Mr. Andrews did not request any changes to the version of the Order that Plaintiff's firm filed on April 29, 2013. As we confirmed with Mr. Andrews, at least twice during our conversation and by e-mail at noon, the Order would be filed by the end of the day. Under these circumstances, Mr. Harmon's misrepresentations to this Court should be disregarded.

Respectfully submitted,

/S/

Jessica Chiclacos

cc: Peter Andrews, Esq. (via ECF)